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**Hearing Date: January 18, 2019 at 10:00 a.m.**  
**Objection Deadline: January 11, 2019 at 4:00 p.m.**

and

Streusand, Landon, Ozburn & Lemmon, LLP  
Sabrina L. Streusand  
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*Attorneys for Dell Financial Services L.L.C.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

**In re:**

**SEARS HOLDINGS CORPORATION, *et al.*,  
  
Debtors.**

**Chapter 11**

**Case No. 18-23538 (RDD)**

**(Jointly Administered)**

**NOTICE OF HEARING FOR DELL FINANCIAL SERVICES L.L.C.'S  
MOTION TO TERMINATE THE AUTOMATIC STAY OR, IN THE  
ALTERNATIVE, FOR ADEQUATE PROTECTION PAYMENTS**

**PLEASE TAKE NOTICE** that a hearing to consider Dell Financial Services L.L.C.'s Motion to Terminate the Automatic Stay or, in the Alternative, for Adequate Protection Payments (the "Motion"), will be held before the Honorable Robert D. Drain, United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, on January 18, 2019 at 10:00 a.m.

**PLEASE TAKE FURTHER NOTICE** that Objections, if any, to the Motion must be made in writing, with a hard copy delivered to the Chambers of the Honorable Robert D. Drain,

United States Bankruptcy Court for the Southern District of New York, 300 Quarropas Street, White Plains, New York 10601, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules, shall be filed with the Bankruptcy Court (a) by attorneys practicing in the Bankruptcy Court, including attorneys admitted *pro hac vice*, electronically in accordance with General Order M-399 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov)), and (b) by all other parties in interest, on a CD-Rom, in text-searchable portable document format (PDF), to the extent applicable, and shall be served in accordance with the *Amended Order Implementing Certain Notice and Case Management Procedures* (the “Amended Case Management Order”) , entered on November 1, 2018 (Docket No. 405), so as to be filed and received no later than **January 11, 2019 at 4:00 p.m. (Eastern Time)** (the “Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that if an Objection to the Application is not received by the Objection Deadline, the relief requested shall be deemed unopposed, and the Bankruptcy Court may enter an order granting the relief sought without a hearing pursuant to the Amended Case Management Order

**PLEASE TAKE FURTHER NOTICE** that any objecting parties are required to attend the Hearing, and failure to appear may result in relief being granted upon default.

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Dated: December 14, 2018

Respectfully submitted,

By: /s/ Jonathan A. Grasso  
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**ATTORNEYS FOR DELL FINANCIAL  
SERVICES L.L.C.**

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**SEARS HOLDINGS CORPORATION, *et al.*,  
  
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**DELL FINANCIAL SERVICES L.L.C.'S MOTION TO  
TERMINATE THE AUTOMATIC STAY OR, IN THE  
ALTERNATIVE, FOR ADEQUATE PROTECTION PAYMENTS**

TO THE HONORABLE ROBERT D. DRAIN, UNITED STATES BANKRUPTCY JUDGE:

Dell Financial Services L.L.C. (“**DFS**”), an equipment leasing creditor in the above-styled and numbered bankruptcy case, files this Motion to Terminate the Automatic Stay or, in the Alternative, for Adequate Protection Payments (the “**Motion**”), pursuant to 11 U.S.C. § 362(d)(1), Federal Rule of Bankruptcy Procedure 4001 and Local Rule 4001-1, and in support thereof would respectfully show the Court as follows:

## **I. FACTS**

1. On October 15, 2018 (the “**Petition Date**”), Sears Holdings Corporation and related entities (collectively, the “**Debtors**” or “**Sears**”) commenced their bankruptcy cases by filing voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code.

2. Prior to the Petition Date, the Debtors leased from DFS certain Dell computer equipment and related product (the “**Equipment**”) described more specifically and identified in the master lease and lease schedule no. 001-6505200-024 (the “**Lease**”) attached as Exhibit “A,” and incorporated herein for all purposes.

3. The lease payments are due on the first day of the month in the amount of \$53,131.20. Since the Petition Date, no lease payments have been made toward the Lease. The amount past due for October 15, 2018 to October 31, 2018 is \$26,565.51, the amount past due for November 2018 is \$53,131.02, and the amount past due for December is \$53,131.02. Additionally, the amount of \$52.71 is past due for use tax. The original product acquisition cost for the Equipment is \$2,156,291.43.

4. The Debtors are in the process of liquidating a large number of stores (the “**Store Closing Sales**”) and seeking to sell the more profitable locations through a 363 bidding process. Requests for information from and by DFS to Sears as to the location of the Equipment and safeguarding of the Equipment during the store closing and liquidation sales period have not been responded to and it is unclear, at best, as to what is happening to the Equipment under the Lease.

5. In addition, to give notice to creditors of its leasehold interest, DFS perfected its security interest in the Equipment by filing Uniform Commercial Code Financing Statements (“**UCC-1**”) with the State of Illinois. A true and correct copy of the UCC-1 is attached as Exhibit “B” and incorporated herein for all purposes.

6. The pre-petition amount owed under the Lease for October is \$26,565.51.

7. No lease payments have been made post-petition. The total amount due under the Lease post-petition is \$132,880.26. The total amount due under the Lease pre-petition and post-petition is \$159,445.77.

8. The Lease is now in the “Renewal Term” as set forth in Exhibit “A” in that during the third year of the Lease, if all payments under the Lease are timely paid, then the Debtors can purchase the leased product for \$1.00 at the end of the Renewal Term, which is February 1, 2019 in this case.

9. DFS has had to retain counsel to represent it before this Court and is incurring attorneys’ fees and court costs as a result of bringing this Motion.

## **II. ARGUMENT**

10. “On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay . . . (1) for cause . . . .” 11 U.S.C. § 362(d)(1). Although the Bankruptcy Code does not define “cause”, courts view “cause” as being a broad and flexible concept. “[W]hether sufficient cause exists to grant stay relief must be addressed on a case by case basis.” In re M.J. & K. Co., Inc., 161 B.R. 586, 591 (Bankr. S.D.N.Y. 1993); see also In re Balco Equities Ltd., 312 B.R. 734, 738 (Bankr. S.D.N.Y. 2004).

11. DFS moves the Court for an Order terminating the automatic stay for cause under 11 U.S.C. § 362(d)(1), including:

a. During the Store Closing Sales, the Equipment, by its very nature, is subject to potential theft, loss, shrink and/or mishandling. In addition, the value of the Equipment will decline due to normal depreciation and usage and, therefore, DFS’ interest in the Equipment is not being adequately protected while this chapter 11 bankruptcy case is pending. The Debtors have not provided or offered adequate protection of DFS’ interest in the Equipment.

Cause, therefore, exists to terminate the automatic stay under 11 U.S.C. §361. The Debtors do have equity in the equipment to the extent that the lease payments are made pursuant to the terms of the renewal.

WHEREFORE, Dell Financial Services L.L.C. hereby requests that this Court:

- (a) enter an order terminating the automatic stay to allow Dell Financial Services L.L.C. to terminate the Lease and recover its Equipment; and/or
- (b) grant Dell Financial Services L.L.C. adequate protected payments; and/or
- (c) grant such other and further relief to which it may be entitled.

Dated: December 14, 2018

Respectfully submitted,

By: /s/ Jonathan A. Grasso

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**ATTORNEYS FOR DELL FINANCIAL  
SERVICES L.L.C.**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instruments have been served via first class mail, postage pre-paid on this 14th day of December, 2018 upon the parties listed below, and electronically upon those parties on the current Master Service List maintained by the Claims and Noticing Agent to the email addresses provided therein:

Honorable Judge Robert D. Drain – Chambers Copy  
U.S. Bankruptcy Court  
Southern District of New York  
300 Quarropas Street, Room 248  
White Plains, NY 10601

Sears Holdings Corporation  
Attn: Stephen Sitley and Luke Valentino  
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Hoffman Estates, IL 60179

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Jacqueline Marcus  
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Office of the United States Trustee  
Attn: Paul Schwartzberg  
U.S. Federal Office Building  
201 Varick Street, Room 1006  
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Skadden, Arps, Slate, Meagher & Flom LLP  
Attn: Paul Leake, Shana Elberg, George Howard  
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